The Court agreed with the submission of counsel for the Crown and consequently did not find it necessary to decide whether the procedure adopted in this case was an irregularity within the meaning of section 448 (now section 440) of the Criminal Procedure Code.

Conviction quashed.

Appeal allowed.

Solicitors for the appellant: *L. Rayner & Co.*

LEN OMNIBUS CO. LTD. v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) May 28, 1955]

[K. L. — Criminal Appeal No. 35 of 1955]

Criminal Procedure Code (Cap. 6), ss. 154, 164 and 422 — Joinder of more than three charges — Accused pleading guilty to more than three charges — Whether he can be convicted and sentenced for all such charges.

In this case the appellant, the registered owner of a bus, was charged with four offences in connection with the said bus against the provisions of the Motor Vehicles (Construction & Use) Regulations, 1948. The appellant pleaded guilty on all charges and was convicted and sentenced to a fine of $500 on each of the charges. On appeal it was argued that as the appellant had been charged with more than three offences at one trial, the trial became an illegal one by the reason of the provisions of s. 164 of the Criminal Procedure Code.

Held: (1) the mischief sought to be avoided by s. 164 of the Criminal Procedure Code is not so much the joinder of more than three charges as the more than three charges forming part of a single trial; (2) as the appellant had pleaded guilty in this case to all four charges there was no trial for the purposes of s. 154 of the Criminal Procedure Code and there could be no mischief which was sought to be avoided by s. 164 of the Code.

Cases referred to:—

(1) *Subramania Ayyar v. King Emperor* L.R. 28 I.A. 257; I.L.R. 25 Mad. 61.

(2) *Tara Singh v. Public Prosecutor* (1954) M.L.J. 123.

MAGISTRATE'S CRIMINAL APPEAL.

Morris Edgar for the appellant.

J. P. Kirby (Federal Counsel) for the respondent.

Buhagiar J.: — The appellant, the registered owner of bus B. 9822 authorised in PSV Permit No. 11387 under comprehensive permit No. 5, was charged with four offences in connection with the said bus against the provisions of Regulations 98, 97(1), 130 and 103 of the Motor Vehicles (Construction and Use) Regulations (G.N. 944/1948) and punishable under section 8(1) of the Road Transport Proclamation.

The appellant pleaded guilty on all charges, was convicted and sentenced to a fine of $500 on each of the charges.

This is an appeal against conviction and sentence.

The ground for the appeal against conviction is that the appellant having been charged with more than three offences at one trial, the trial became an illegal one under and by reason of the provisions of section 164 of the Criminal Procedure Code.

Counsel for the appellant referred me to the case of *Subramania Ayyar v. King Emperor*[1]. In that case the appellant was tried on an indictment in which he was charged with no less than forty-one acts extending over a period of two years; this was in direct contravention of the provisions of section 234 of the Indian Criminal Procedure Code and their Lordships held that the disobedience to an express provision as to a *mode of trial* did not come within the description of error, omission or irregularity which could be cured by section 537 of the Indian Criminal Procedure Code.

I had the opportunity of considering this *Subramania's case*[1] in *Tara Singh v. Public Prosecutor*[2] in which I made the following observations:—

"The decision in Subramania's case was considered by the Privy Council in Abdul Rahman v. King Emperor (1926) I.L.R. Rang. 53 which was a case of non-compliance with the provisions of section 360 of the Indian Criminal Procedure Code; Subramania's case was distinguished as "one which the Code positively prohibited and it was possible that it might have worked actual injustice to the accused", and section 537 of the Indian Criminal Procedure Code was held to cure the irregularity in not complying with the provisions of section 360. "To sum up", their Lordships said (at p. 69), "in the view which their Lordships take of the several sections of the Code of Criminal Procedure the bare fact of such an omission or irregularity as occurred in the case under appeal, unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to warrant the quashing of a conviction, which on their Lordships' view, may be supported by the curative provisions of sections 535 and 537.

In Abdul Rahman's case their Lordships did contemplate circumstances in which a defect in procedure might be incurable; per contra in Subramania's case they did not say that an illegality in the form of trial is in all circumstances incurable. The two Privy Council decisions above referred to were the subject of consideration by a Full Bench of the Court of Allahabad in the case of Kapoor Chand v. Suraj Prasad, where after considering the case of Subramania the Court observed at p. 312:—

'In a later case, however, viz. Abdul Rahman v. King Emperor, their Lordships pointed out, at page 125, that in the earlier case 'it was possible that it might have worked actual injustice to the accused'. It may be that their Lordships of the Privy Council in the later case, wanted to point out that section 537 of the Code of Criminal Procedure could not cure the defect in Subramania Ayyar's case because the Code contained the provision that an irregularity, which had worked injustice to the accused, could not be cured. But it is significant that although their Lordships of the Privy Council drew a distinction between an 'illegality' and an 'irregularity' in the earlier case, which was decided in the year 1901, the legislature did not introduce the word 'illegality' in section 537 or anywhere else in the Code, although it was amended after that year. This being the state of the law, we do not think that we should introduce a distinction

between 'illegality' and 'irregularity'. The sole criterion given by section 537 is whether the accused person has been prejudiced or not. The object of procedure is to enable the court to do justice, but, if in spite of even a total disregard of the rules of procedure, justice has been done, there would exist no necessity for setting aside the final order which is just and correct simply because the procedure adopted was wrong.' See also Emperor v. Bishan Sahai Vidyarthi I.L.R. 55 All. 779."

In *Subramania's case*[1] their Lordships were unable to regard "the disobedience to an express provision as to a *mode of trial* as a mere irregularity." "The mischief" they said "sought to be avoided by the statute has been done. The effect of the multitude of charges before the jury has not been averted by dissecting the verdict afterwards and appropriating the finding of guilty only to such parts of the written accusation as ought to have been submitted to the jury" (L.R. 28 I.A. at p. 263). It is clear from the judgment that in referring to "disobedience to an express provision as to a mode of trial" their Lordships considered that the illegality consisted in the trial at one and the same time of a multitude of charges and not the joinder of the various charges. As the Lord Chancellor remarked in the course of arguments by counsel for the respondent (L.R. 28 I.A. at p. 262): "It is not the joinder that is wrong. It is the trial of all offences at the same time." The mischief sought to be avoided by section 164 is not so much the joinder of more than three charges as the more than three charges forming part of a single trial. The joinder of charges by itself is not an illegality which cannot be cured by the provisions of section 422 of the Criminal Procedure Code.

I do not think that if a person accused of more offences of the kind mentioned in section 164(1) were charged with more than three such offences but separate trials were conducted in respect of such not more than three offences at each trial, the trials would be vitiated and null by reason only of the irregularity in the original joinder of charges.

In the case of this appeal the appellant did not claim trial but pleaded guilty to all four charges. There was, therefore, no trial for the purposes of section 154 of the Criminal Procedure Code and there could be no mischief which was sought to be avoided by the said section.

For the above reasons the appeal as to conviction must fail. The learned Deputy Public Prosecutor submitted that the offences in question have been committed as a result of one series of acts so connected together as to form one transaction and that therefore section 165(1) of the Criminal Procedure applies. In view of the conclusion I have arrived at with regard to the provisions of section 164 it is not necessary for me to deal with the question raised by the learned Deputy Public Prosecutor.

With regard to sentence, the learned Counsel for the appellant submitted that from the grounds of judgment it is clear that the learned President considered that the offences in the last three charges were not of so serious a nature as the offence in the first charge but this notwithstanding the maximum fine was awarded in respect of all offences. I fully agree with this submission and consequently reduce the fine on the second charge to $300 and the fines on the third and fourth charges to $100 each. The order of the learned President is altered accordingly. Any amount in excess of the fines so fixed, that is a total of $1,000, if paid, is to be refunded to the appellant.

Sentence reduced.

Solicitors for the appellant: *Bannon & Bailey.*

SEET SOON GUAN v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) July 15, 1955]

[K. L. — Criminal Appeal No. 47 of 1955]

Penal Code, ss. 25, 465 & 471 — Fraudulently using as genuine a forged document — Meaning of "fraudulently".

This was an appeal against the conviction and sentence of the appellant on a charge of fraudulently using as genuine a 1953 official Police Diary an offence punishable under ss. 465 and 471 of the Penal Code. It was found at the trial by the learned President of the Sessions Court that the appellant had used the Police Diary which was a false document and which he knew was a false document, in disciplinary proceedings in order to bolster up his defence to the disciplinary charges preferred against him. The defence at the trial was based on the contention, that even assuming that the appellant had knowingly made use of the false diary in such circumstances as the prosecution allege for the purpose of getting himself out of trouble, that does not amount to fraudulent user. The appeal was argued on the correct meaning of the term "fraudulently" in the relevant sections of the Penal Code.

Held: (1) neither the acquisition nor the deprivation of property is an essential ingredient of the intent to defraud; (2) "fraudulently" does not necessarily connote deceit and injury to the person deceived, it may but it need not do so; a person acts fraudulently or with intent to defraud if he acts with the intention that some person be deceived and by means of such deception either an advantage should accrue to him or injury, loss or detriment should befall some other person or persons.

Cases referred to:—

(1) *Loo Wee Wan v. Regina* (1955) M.L.J. 73.

(2) *R. v. Wines* (1953) 2 All E.R. 1947; 37 Cr. App. R. 197.

(3) *Sanjiv Ratanappa Ronad v. Emperor* A.I.R. 1932 Bom. 545; I.L.R. 56 Bom. 488.

(4) *Emperor v. Mohit Kumar Mukerjee* A.I.R. 1926 Cal. 89.

(5) *Queen-Empress v. Abbas Ali* I.L.R. 25 Cal. 512.